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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,445	09/08/2003	Christopher J. Cruickshank	UK8140	8467
34356	7590	03/09/2004	EXAMINER	
ASHKAN NAJAFI, P.A. 113 LAMPLIGHTER LANE PONTE VERDA BEACH, FL 32082			MILLER, BENA B	
			ART UNIT	PAPER NUMBER
			3712	
DATE MAILED: 03/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

## Application No.

10/656,445

## Applicant(s)

CRUICKSHANK, CHRISTOPHER J.

## Examiner

Bena Miller

## Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 09/08/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 6 and 10, there is lack of antecedent basis for the limitation "said plurality of marbles".

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Godfrey.

Regarding claim 1 Godfrey teaches in figures 1-8 a game for learning binary mathematics comprising a plurality of balls (17), a backboard (3), a plurality of elongate members selectively connected to each other and the backboard (fig.1), a plurality of gate sections pivotally connected to the backboard and engageable with select ones of the plurality of members (99, 101, 103; col. 3, par. 2 and 3), select ones of the plurality of balls causing corresponding ones of the plurality of gate sections to pivot between

open and closed positions after passing thereby (fig.1; col.. 3, par. 2 and 3), corresponding 0 and 1 binary values being assigned to closed and open ones of the plurality of gate sections (col. 3, line 70 – col. 4, line 10).

Regarding claim 3, Godfrey further teaches the plurality of gate sections each have an axis of rotations extending substantially perpendicularly to the backboard (col. 3, par. 3 and 4, fig. 1).

Regarding claim 4, Godfrey further teaches the plurality of gate sections each include a top surface that becomes substantially aligned with a corresponding one of the plurality of elongate members (fig.1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 6-8,10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Godfrey in view of Libbey.

Godfrey teaches in the figures most of the elements of the claimed invention, except for a plurality of LED's connected to one of the plurality of electrical contacts. Libbey teaches an educational device for teaching binary computation having flip-flop relay attached to wall 3 so when the flip-flop relay is in a particular position, in this instance "1" position, a signal light for that digit is illuminated (col. 4, line 74 – col. 5 line 19). It would have been obvious to one having ordinary skill in the art at the time the

invention was made to incorporate a plurality of LED's as taught by Libbey in the game of Godfrey for the purpose of illuminating a digit when the gate section is in its right position.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Godfrey in view of Lapsa et al.

Godfrey teaches in the figures most of the elements of the claimed invention, except for the balls formed of glass materials. Lapsa teaches a binary educational device that uses marbles 30 (It should be noted, the Examiner has taken the broadest reasonable interpretation of the word "marble" 3.Games. a. A small hard ball, usually of glass, used in children's games.<sup>1</sup>) to roll in binary computer 10 (col. 2, lines 38-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use glass balls as taught by Lapsa for the game of Godfrey for the purpose of computing a binary result from the game.

Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Godfrey in view of Libbey as applied to claims 6 and 10, respectively, above, and further in view of Lapsa et al.

Godfrey and Libbey teach in the figures most of the elements of the claimed invention, except for the balls formed of glass materials. Lapsa teaches a binary educational device that uses marbles 30 (It should be noted, the Examiner has taken the broadest reasonable interpretation of the word "marble" 3.Games. a. A small hard ball, usually

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of glass, used in children's games.<sup>2</sup>) to roll in binary computer 10 (col. 2, lines 38-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use glass balls as taught by Lapsa for the game of Godfrey and Libbey for the purpose of computing a binary result from the game.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Divilbiss teaches a toy mechanical computer. Wold teaches an education device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

hbn

Bene B. Niv  
03/09/04